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Attorneys for Plaintiff
CENTURY SURETY COMPANY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CENTURY SURETY COMPANY,

Plaintiff,

v.

CERTAIN UNDERWRITERS AT
LLOYD'S LONDON,

Defendants.

Case No.: Case #

COMPLAINT FOR CONTRIBUTION

COMES NOW, Plaintiff Century Surety Company ("Century Surety") and its
Complaint against Certain Underwriters at Lloyd's London ("Underwriters") alleges
as follows:

JURISDICTION AND VENUE

1. This court has original diversity jurisdiction pursuant to 28 U.S.C. § 1332
in that this is a civil action between citizens of different states in which the amount in
controversy exceeds \$75,000, exclusive of interests and costs.

2. Venue is proper in this District pursuant to 28 U.S.C. §1391, since the
insurance policies at issue in this case were issued in this district and the underlying
litigation took place within this district, and, thus, a substantial part of the events or
omissions giving rise to the claim occurred here.

THE PARTIES

3. Plaintiff Century Surety is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business in Michigan. Century Surety issued the insurance policies at issue in this case through a licensed surplus lines broker in California.

4. Century Surety is informed and believes and thereon allege that defendant Underwriters is and at all relevant times was an insurance company which is not admitted in California, but which is authorized to and did issue the insurance policies at issue in this case through a licensed surplus lines broker in California.

GENERAL ALLEGATIONS

5. Century Surety issued commercial general liability policy no. CCP 724808 to Shree Balaji Corporation *dba* Winton Hotel for the period of September 1, 2011 to September 1, 2012. The owner and principal of Shree Balaji Coporation is Balwantsingh Thakor (“Thakor”). The Century Surety policy included an additional insured endorsement naming Browning Properties, LP (“Browning”).

6. Underwriters issued the following three commercial general liability policies to Shree Balaji Coporation *dba* Winton Hotel:

<u>Policy Period</u>	<u>Underwriters Policy No.</u>
9/1/08 to 9/1/09	OME000736
9/1/09 to 9/1/10	OME003623
9/1/12 to 9/1/13	OME023266

Century Surety is informed and believes and thereon alleges that one or more of the Underwriters policies included an additional insured endorsement naming Browning.

7. Tower Select Insurance Company (“Tower”) issued commercial general liability policy no. CGLBD00877-10 to Shree Balaji Corporation *dba* Winton Hotel for the period of September 1, 2010 to September 1, 2011.

8. Thakor and Browning were named as defendants in the following lawsuits filed by tenants of the Winton Hotel alleging various causes of action related

to claims that the hotel was not maintained in a habitable condition (collectively the “Winton Hotel Lawsuits”):

<u>Title</u>	<u>S.F. Superior Court Case No.</u>	<u>Filing Date</u>
<i>Bernard Strong v. Browning, et al.</i>	CGC-14-539665	6/4/14
<i>William Masone v. Browning, et al.</i>	CGC-14-540803	7/29/14
<i>Michael Marion, et al., v. Browning, LLC, et al.</i>	CGC-14-541044	8/8/14
<i>Richard Chapman v. Browning, et al.</i>	CGC-15-544094	2/11/15
<i>Raymond Berry v. Browning, et al.</i>	CGC-15-544710	3/13/15
<i>Susan Hansen, et al. v. Browning, et al.</i>	CGC-15-544711	3/13/15
<i>Anthony Thorpe v. Browning, et al.</i>	CGC-15-544485	3/3/15
<i>Jacqueline Quintana, et al. v. Browning, et al.</i>	CGC-15-545710	5/7/15
<i>Patrick J. Dunlay v. Browning, et al.</i>	CGC-15-547650	8/27/15

9. The Winton Hotel Lawsuits were tendered for a defense and indemnity to Century Surety, Tower, and Underwriters. Century Surety and Tower agreed to defend both Thakor and Browning in each of the Winton Hotel Lawsuits under reservations of rights.

10. Underwriters declined to participate or otherwise ignored the tenders of the Winton Hotel Lawsuits. Underwriters owed a duty to defend and indemnify both Thakor and Browning in each of the Winton Hotel Lawsuits as each alleged “bodily injury”, “property damage” and/or “personal and advertising injury” had occurred during the Underwriters policy periods. Underwriters’ denials were improperly based on the statute of limitations for the claims, which had not been resolved by any court, and an “oral contracts” exclusion in its policies.

11. Century Surety and Tower have paid over \$400,000 in defense fees and costs for the defense of Thakor and Browning in the Winton Hotel Lawsuits. Underwriters should have paid an equal one-third share of these fees and costs as it

1 had an equal obligation to provide a full defense to both Thakor and Browning.

2 12. Century Surety paid \$238,848.40 and Tower paid \$263,848.40 toward
3 the settlements of the Winton Hotel Lawsuits. Underwriters should have paid an
4 equitable portion of those settlements. Century Surety contends Underwriters
5 equitable share of the settlements paid was over \$100,000.

6 13. Tower has assigned its rights to Century Surety to seek contribution from
7 Underwriters for the amounts Tower paid to defend and settle the Winton Hotel
8 Lawsuits.

9 **FIRST CAUSE OF ACTION**

10 (Declaratory Relief)

11 14. Century Surety incorporates herein by reference the allegations made in
12 Paragraphs 1 through 13 above.

13 15. Century Surety is informed and believes that the Winton Hotel Lawsuits
14 were tendered to Underwriters for defense and indemnification, however,
15 Underwriters has not contributed to the defense or indemnification of those actions.

16 16. Century Surety is informed and believes and thereon alleges that the
17 Underwriters policies were all written on Commercial General Liability Coverage
18 Form CG 0001 (12/04) which provides Coverage A for “bodily injury” and “property
19 damage” which occurs during the policy period, and Coverage B for “personal and
20 advertising injury” caused by an offense which occurs during the policy period. The
21 definition of “personal and advertising injury” includes as offense c. “The wrongful
22 eviction from, wrongful entry into, or invasion of the right of private occupancy of a
23 room, dwelling or premises that a person occupies, committed by or on behalf of its
24 owner, landlord or lessor.” The Underwriters policy also provides Supplementary
25 Payments coverage for “all costs taxed against the insureds”. The complaints in the
26 Winton Hotel Lawsuits each alleges “bodily injury”, “property damage” and/or
27 “personal and advertising injury” that occurred during the Underwriters policy
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1 periods, and each lawsuit sought to recover the Plaintiffs' attorney fees from the
2 insureds as costs of the litigation. Underwriters therefore owed a duty to defend and
3 indemnify both Thakor and Browning against the Winton Hotel Lawsuits.
4 Underwriters disputes this contention.

5 17. An actual controversy has arisen and now exists between Century Surety
6 and Underwriters. A judicial declaration is necessary to inform the parties regarding
7 Underwriters duties and liabilities under its policies issued to Thakor for the defense
8 and indemnity of the Winton Hotel Lawsuits.

9 **SECOND CAUSE OF ACTION**

10 (Equitable Contribution – Defense Costs)

11 18. Century Surety incorporates herein by reference the allegations made in
12 Paragraphs 1 through 17 above.

13 19. The defense of the Winton Hotel Lawsuits were each tendered to
14 Underwriters. Underwriters owed a defense to both Thakor and Browning in each of
15 the Winton Hotel Lawsuits, but it denied the tenders of defense and/or has not
16 contributed an equitable share of the defense costs.

17 20. Century Surety and Tower provided a defense to Thakor and Browning
18 in the Winton Hotel Lawsuits incurring significant fees and costs. Tower has assigned
19 its rights to Century Surety to recover the defense fees that should have been paid by
20 Underwriters. Century Surety is entitled to contribution from Underwriters for an
21 equitable share of the defense costs paid by Century Surety and Tower, plus interest.

22 **THIRD CAUSE OF ACTION**

23 (Equitable Contribution – Indemnity)

24 21. Century Surety incorporates herein by reference the allegations made in
25 Paragraphs 1 through 17 above.

26 22. Underwriters had an obligation to indemnify Thakor and Browning with
27 respect to the Winton Hotel Lawsuits under Coverages A and/or B, and to pay for
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1 Supplementary Payments according to its insurance policies.

2 23. Underwriters has denied all requests for indemnity or supplementary
3 payments, and/or failed to reimburse Century Surety or Tower for their equitable
4 share of the settlements paid in the Winton Hotel Lawsuits.

5 24. Century Surety and Tower indemnified Thakor and Browning and
6 resolved the Winton Hotel Lawsuits. Tower has assigned its rights to Century Surety
7 to recover the indemnification costs that should have been paid by Underwriters.
8 Century Surety is entitled to equitable contribution from Underwriters for the
9 indemnification costs paid by Century Surety and Tower, plus interest.

10 WHEREFORE, Century Surety prays for judgment as follows:

11 1. On the First Cause of Action, that the Court make and enter a binding
12 judicial declaration that Underwriters owed a duty to defend Thakor in each of the
13 Winton Hotel Lawsuits;

14 2. On the First Cause of Action, that the Court make and enter a binding
15 judicial declaration that Underwriters owed a duty to defend Browning in each of the
16 Winton Hotel Lawsuits;

17 3. On the First Cause of Action, that the Court make and enter a binding
18 judicial declaration that Underwriters owed a duty to indemnify Thakor in each of the
19 Winton Hotel Lawsuits;

20 4. On the First Cause of Action, that the Court make and enter a binding
21 judicial declaration that Underwriters owed a duty to indemnify Browning in each of
22 the Winton Hotel Lawsuits;

23 5. On the Second Cause of Action, for judgment against Underwriters in an
24 amount to be proven at trial for reimbursement to Century Surety for Underwriters'
25 equitable share of the defense costs paid by Century Surety and Tower for the defense
26 of Thakor in the Winton Hotel Lawsuits;

27 6. On the Second Cause of Action, for judgment against Underwriters in an
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1 amount to be proven at trial for reimbursement to Century Surety for Underwriters'
2 equitable share of the defense costs paid by Century Surety and Tower for the defense
3 of Browning in the Winton Hotel Lawsuits;

4 7. On the Third Cause of Action, for judgment against Underwriters in an
5 amount to be proven at trial for reimbursement to Century Surety for Underwriters'
6 equitable share of the indemnity paid by Century Surety and Tower in the Winton
7 Hotel Lawsuits.

8 8. For prejudgment interest;

9 9. For such other and further relief as the Court deems just and proper.

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11 DATED: July 28, 2017

WOOLLS PEER DOLLINGER & SCHER
A Professional Corporation

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13
14 /s/ Lisa Darling-Alderton
15 LISA DARLING-ALDERTON
16 Attorneys for Plaintiff
17 CENTURY SURETY COMPANY
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